

Article

General Recommendation N.º 24 of the Convention on the Elimination of All Forms of Discrimination against Women does it broaden or construct an interpretation for State Parties?

A Recomendação Geral N.º 24 da Convenção para a Eliminação de todas as Formas de Discriminação contra a Mulher amplia ou constrói uma interpretação aos Estados Partes?

¿La Recomendación General N.º 24 de la Convención sobre la Eliminación de todas las Formas de Discriminación contra la Mujer amplía o construye una interpretación para los Estados Partes?

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Abstract

Objectives: This study examines whether General Recommendation (GR) N.º 24, on women's health, broadens or constructs interpretations for the State parties of the Convention on the Elimination of All Forms of Discrimination against Women. **Methodology:** A documentary and bibliographical research was conducted to collect data and critically review international documents and specialized literature. The results were analyzed through critical-narrative review. **Results:** The Convention covers women's rights, including health, and the Committee on the Elimination of Discrimination against Women issues general recommendations to guide its implementation by State parties. GR N.º 24 expands the original recommendations, addressing issues such as sexual health, gender-based violence, and participation in decision-making. **Conclusions:** The political interpretation of the Convention, as advocated by Kelsen, enables the observation of the needs and political context of the State parties. GR N.º 24 expands the recommendations, reflecting the need to adapt public policies to global changes and women's needs.

Keywords: Human Rights; Women's Health; International Cooperation; International Law; Women's Rights.

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Resumo

Objetivos: analisar se a Recomendação Geral N.º 24, sobre saúde da mulher, amplia ou constrói interpretações para os Estados Partes da Convenção para a Eliminação de todas as Formas de Discriminação contra a Mulher. **Metodologia:** foi realizada uma pesquisa documental e bibliográfica para coletar dados e revisar criticamente documentos internacionais e literatura especializada. Os resultados foram analisados por meio da revisão crítico-narrativa. **Resultados:** a Convenção abrange direitos da mulher, incluindo saúde, e o Comitê da Convenção sobre a eliminação de todas as formas de discriminação contra as mulheres emite recomendações gerais para orientar sua implementação pelos Estados Partes. A Recomendação Geral N.º 24 amplia as recomendações originais, abordando questões como saúde sexual, violência de gênero e participação na tomada de decisões. **Conclusões:** a interpretação política da Convenção, conforme preconizado por Kelsen, permite observar as necessidades e o contexto político dos Estados-parte. A Recomendação Geral N.º 24 amplia as recomendações, refletindo a necessidade de adaptação das políticas públicas às mudanças globais e às necessidades das mulheres.

Palavras-chave: Direitos Humanos; Saúde da Mulher; Cooperação Internacional; Direito Internacional; Direitos da Mulher.

Resumen

Objetivos: Este estudio analiza si la Recomendación General (RG) N.º 24, sobre la salud de la mujer, amplía o construye interpretaciones para los Estados Partes de la Convención para la Eliminación de todas las Formas de Discriminación contra la Mujer. **Metodología:** Se realizó una investigación documental y bibliográfica para recopilar datos y revisar críticamente documentos internacionales y literatura especializada. Los resultados fueron analizados mediante la revisión crítico-narrativa. **Resultados:** La Convención abarca los derechos de las mujeres, incluida la salud, y el Comité de la Convención sobre la eliminación de todas las formas de discriminación contra la mujer emite recomendaciones generales para guiar su implementación por parte de los Estados-partes. La RG N.º 24 amplía las recomendaciones originales, abordando cuestiones como la salud sexual, la violencia de género y la participación en la toma de decisiones. **Conclusiones:** La interpretación política de la Convención, como preconiza Kelsen, permite la observación de las necesidades y el contexto político de los Estados Partes. La RG N.º 24 amplía las recomendaciones, reflejando la necesidad de adaptar las políticas públicas a los cambios globales y a las necesidades de las mujeres.

Palabras-Claves: Derechos Humanos; Salud de la Mujer; Cooperación Internacional; Derecho Internacional; Derechos de la Mujer.

Introduction

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is one of the most important international instruments for the defense of women's rights⁽¹⁾. Through a specialized Committee, CEDAW issues general recommendations to States Parties, aimed at guiding public policies that promote gender equality and combat discrimination.

In this context, General Recommendation (GR) N.º 24⁽²⁾ emerges as a key document, specifically addressing women's health. This recommendation seeks to clarify and strengthen the commitments of States Parties in relation to equitable access to health services, including aspects such as family planning, care during pregnancy, childbirth and the postpartum period.

Silvia Pimentel and Alice Bianchini, in “Feminism(s)”, extensively discuss the relevance of international instruments such as CEDAW for the promotion of women's rights and the importance of inclusive public policies in the area of health⁽³⁾. And they point out that the effective implementation of GR 24 can result in significant improvements in reproductive and maternal health, as well as

promoting gender equality more broadly. With special emphasis on its importance in promoting public policies aimed at women's health and eliminating discriminatory barriers that prevent women's full access to health services.

However, the interpretation and implementation of GR 24 raises important questions. These include: to what extent have States Parties complied with their commitments under CEDAW? What are the challenges encountered in implementing these recommendations? Silvia Pimentel's perspective points to various difficulties, such as the lack of resources, cultural barriers and political resistance that can limit the effectiveness of public health policies aimed at women⁽³⁾.

This article sets out to investigate whether General Recommendation N.º 24 broadens or constructs interpretation, as provided for in Article 12 of CEDAW, and whether it contributes to a more comprehensive approach to women's rights. Our hypothesis is that the political interpretation of General Recommendation 24 can consequently extend the protection offered by the Recommendation, considering the political, social and cultural context in which these recommendations are formulated and implemented by the States Parties.

This article, therefore, reports on the results of a research project on the interpretation and implementation of GR 24 in relation to women's health, analyzing its impact on the achievement of gender equality and justifying the importance of a progressive approach to the promotion of women's health and well-being at the international level, considering its expansive or constructive interpretation. Silvia Pimentel highlights the importance of an integrated and context-sensitive approach to ensure the effectiveness of health policies and the promotion of gender equality⁽³⁾.

Methodology

This study focused on documentary and bibliographic research into international documents. For data collection, we used the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁽¹⁾, as well as its general recommendations, with an emphasis on General Recommendation N.º 24⁽²⁾. In addition, we analyzed other relevant recommendations, such as General Recommendation N.º 19⁽⁷⁾. These documents were obtained through official United Nations websites and other reliable academic repositories such as: SciELO, Google Scholar and Cadernos Ibero-Americanos de Derecho Sanitario.

In terms of theoretical reference, we consulted specialized national and international doctrine, including the book "Feminismo(s)" by Silvia Pimentel and Alice Bianchini⁽³⁾. In addition, we used a variety of scientific articles and books on the subject of women's rights and women's health. Specifically, we consulted the following books and articles: "Research Methodology: techniques of investigation, argumentation and writing" by Marcelo Lamy⁽⁴⁾, "Law and peace in international relations" by Hans Kelsen⁽⁸⁾, "Right to Development: content, legal nature, state obligations and effectiveness" by Danilo de Oliveira⁽⁹⁾, "Hermeneutics of development" by Danilo de Oliveira⁽¹⁰⁾, "Brief notes on the epistemological construction of the international legal system in Hans Kelsen" by Leonardo de Camargo Subtil⁽¹¹⁾, "Incorporation and hierarchical stature of international treaties in Brazil" by Marcelo Lamy and Danilo de Oliveira⁽¹²⁾, and "Legal value of international resolutions, declarations and recommendations" by Marcelo Lamy⁽¹³⁾.

Documentary research was carried out on reliable sources, such as the official United Nations website and specialized academic journals. We used specific keywords such as "Human Rights",

“Women’s Health”, “International Cooperation”, “International Law” and “Women's Rights” to ensure the relevance and comprehensiveness of the documents and articles selected.

The search period was delimited between 2019 and 2024, ensuring the inclusion of founding documents and the most recent updates on the subject. The data collected was analyzed using the critical-narrative review technique, which allowed for a dialogical critique, adding to the international documents a comparison of the ideas of the doctrine consulted with the perspectives of the authors of research^(4, p. 338-339).

The Convention on the Elimination of All Forms of Discrimination against Women

A Convenção sobre a Eliminação de Todas as Formas de Discriminação contra as Mulheres (CEDAW), adotada em 1979 pela Assembleia Geral das Nações Unidas, é amplamente reconhecida como um marco internacional na defesa dos direitos das mulheres. Compreendendo um preâmbulo e 30 artigos, esta convenção delinea claramente as diversas formas de discriminação enfrentadas pelas mulheres e estabelece um plano de ação abrangente para erradicar tais práticas a nível nacional e internacional.

CEDAW establishes discrimination:

Article 1 - For the purposes of this Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural and civil spheres, or in any other sphere.⁽¹⁾

CEDAW divides its guidelines into six parts. The quest to guarantee equality in the social and economic spheres is set out in the third part of the convention, between articles 10 and 14. With specific regard to women's health, article 12 states that states parties must ensure equal access for men and women to medical services, including those related to family planning. With emphasis on the period of pregnancy, childbirth and the period after childbirth.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care, in order to ensure equal access for men and women to health care services, including those related to family planning.
2. Without prejudice to the provisions of paragraph 1 above, States Parties shall guarantee women appropriate services in relation to pregnancy, childbirth and the postpartum period, providing free services when necessary and ensuring adequate nutrition during pregnancy and breastfeeding.⁽¹⁾

In order to effectively monitor the implementation by States Parties of the public policies enshrined in the convention, CEDAW set up a committee which, based on periodic reports submitted by States Parties, makes general recommendations to guide compliance with and proper implementation of CEDAW.

By committing themselves without reservations, States Parties effectively adhere to Article 21 of CEDAW:

Article 21

1. The Committee, through the Economic and Social Council of the United Nations, shall report annually to the General Assembly of the United Nations on its activities and may make suggestions and recommendations of a general nature based on the examination of reports and information received from States parties. These general suggestions and recommendations shall be included in the report of the Committee together with any observations made by States parties.
2. The Secretary-General shall transmit the Committee's reports to the Commission on the Status of Women for information.⁽¹⁾

This information and advice structure established by CEDAW highlights the importance of transparency and continuous monitoring of gender equality policies by States Parties. The Committee's recommendations play a crucial role not only in guiding States parties, but also in projecting them to the international community.

The United Nations Committee on the Elimination of Discrimination against Women

Established in 1982, the United Nations Committee on the Elimination of Discrimination against Women is a specialized body made up of 23 members, all experts in women's issues, representing different regions of the world⁽⁵⁾.

The objective of the CEDAW Committee is to monitor the progress of women in the countries that have ratified the 1979 Convention on the Elimination of All Forms of Discrimination against Women, and to follow up on the implementation of the commitment to combat gender discrimination. The implementation of the CEDAW Committee is defined in Article 17 of the Convention⁽³⁾:

Article 17. In order to review progress in the implementation of this Convention, a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) shall be established, composed, at the time of the entry into force of the Convention, of eighteen members and, after its ratification or accession by the thirty-fifth State party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts will be chosen by the States Parties from among their citizens and will exercise their functions independently; an equitable geographical distribution and the representation of different civilizations, as well as the main legal systems, will be taken into account.⁽³⁾

The CEDAW Committee, on a session basis, reviews the national reports submitted by States Parties every four years. These reports address the measures adopted nationally to improve the situation of women and are presented to the CEDAW Committee by government representatives. During the discussions, CEDAW Committee experts analyze the reports, providing comments and requesting additional information⁽³⁾.

The CEDAW Committee also issues recommendations on issues that affect women and that it considers require more attention from States Parties. For example, at its 1989 session, the CEDAW Committee addressed the worrying incidence of violence against women, requesting information on this problem from all countries⁽⁶⁾.

In 1992, it adopted General Recommendation N.º 19, which urges national reports to include statistical data on violence against women, information on services for victims and legislative measures to protect women against violence in their daily lives, including harassment in the workplace, family abuse and sexual violence⁽⁷⁾.

Concrete recommendations

(...)

- c) States parties should encourage the collection of statistics and research on the extent, causes and effects of violence, as well as the effectiveness of measures to prevent and respond to it
- d) Effective measures must be adopted to ensure that the media respect women and promote respect for them.
- e) In their reports, States parties should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women, as well as the type of violence they generate. They should report on the measures taken to overcome violence and the results achieved.⁽⁵⁾

In this context, although the CEDAW Committee, as a rule, has not provided for coercive force to enforce its recommendations, we note that the Recommendation is the result of the portrayal of the needs reported by the States Parties. These concrete recommendations highlight the importance of what is known as soft law in the international context. The term soft law refers to norms and principles which, although not legally binding, have a significant influence on the behavior of states and on the formation of international law⁽¹²⁾. In this sense, the CEDAW Committee's recommendations do not have direct coercive force to enforce compliance, but they are fundamental in promoting international human rights standards and raising awareness about critical issues such as violence against women.

This approach reflects the adaptive and collaborative nature of international law, where persuasion and influence play a key role in promoting progress and global justice⁽¹²⁾.

CEDAW General Recommendation 24

General Recommendation N.º 24 on Women's Health, in which the CEDAW Committee describes in its preamble that it seeks to interpret Article 12 of the Convention.

The Committee on the Elimination of Discrimination against Women, reaffirming that access to health, including reproductive health, is a fundamental right provided for in the Convention on the Elimination of All Forms of Discrimination against Women, decided at its 20th session, in accordance with Article 21, to issue a general recommendation on Article 12 of the Convention⁽²⁾.

General Recommendation N.º 24, in interpreting Article 12 of CEDAW, ends up broadening its provisions, for example by dealing with sexual health, the prevention of and response to gender-based violence, attention to mental health and guaranteeing women's participation in decision-making that affects their health and well-being.

31. States parties must also, in particular:

- (a) Put a gender perspective at the center of all policies and programs affecting women's health and involve women in the planning, implementation and monitoring of such policies and programs and in the provision of health services for women;
- (b) Ensure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health, and in particular allocate resources to programs targeting adolescents for the prevention and treatment of sexually transmitted diseases, including HIV/AIDS;
- (c) Prioritize the prevention of unwanted pregnancies through family planning and sex education and reduce maternal mortality rates through safe maternity services and

- prenatal care. Where possible, legislation criminalizing abortion should be amended in order to remove the punitive measures imposed on women who undergo abortion;
- (d) Monitor the provision of health services to women by public, non-governmental and private organizations in order to guarantee equal access and quality of care;
 - (d) Monitorar a prestação de serviços de saúde às mulheres por organizações públicas, não governamentais e privadas, a fim de garantir igualdade de acesso e qualidade dos cuidados;
 - (e) Require all health services to be consistent with women's human rights, including the rights to autonomy, privacy, confidentiality, informed consent and choice;
 - (f) Ensure that training curricula for health workers include comprehensive, mandatory and gender-sensitive courses on women's health and human rights, in particular on gender-based violence⁽²⁾.

In short, if states submit periodic reports on the implementation of public policies on the ratified commitment, they consequently demonstrate their progress, stagnation and setbacks. This makes it possible for the CEDAW Committee, as the body responsible for “monitoring” the application of the treaty, as Kelsen teaches, to choose the best method of interpretation to be used, be it logical-grammatical, historical, political or economic, since the convention does not expressly state how to interpret it⁽⁸⁾.

However, if states parties do not submit the periodic report as required by CEDAW, they can face repercussions. According to the CEDAW Committee’s rules, cases in which reports are not submitted or are submitted late are dealt with as follows: At each session of the Committee, the Secretary-General shall notify the Committee of all cases in which reports and the additional information requested have not been received. In these situations, the Committee may send the State Party in question, through the Secretary-General, a reminder about the submission of the report or additional information. If, even after the aforementioned reminder has been sent, the State Party fails to submit the report or additional information requested, the Committee may include a reference to this in its annual report to the General Assembly. The Committee may allow States Parties to submit a combined report containing a maximum of two late reports⁽⁵⁾.

These measures demonstrate the seriousness with which the CEDAW Committee takes the obligation of States Parties to report on the implementation of gender equality policies, thus ensuring transparency and accountability in the fulfillment of international commitments.

Does General Recommendation (GR) or construct an interpretation for the States Parties?

According to Kelsen, “general international law does not contain such a rule; but a treaty may stipulate rules concerning its interpretation”⁽⁷⁾. In this context, by adopting an interpretation with a political slant, the extension of GR 24 of the CEDAW Committee is justified. Based on the progress and shortcomings of the States Parties themselves, as well as the new realities in the global context, this extension recommends, from the perspective of the same individuals who are subject to the internationally created right, the need to adapt public policies in accordance with what emerges as appropriate in the current scenario⁽⁸⁾.

This approach aims not only to interpret treaty provisions in a static way, but also to recognize the changing circumstances and needs of the parties involved. In this way, considering interpretation

from a political perspective opens up space for a more dynamic and adaptive approach to international norms, with a view to guaranteeing their effectiveness and relevance in the contemporary context⁽⁹⁾.

At this point, it is clear that international law has always based its norms on consensus between states, with the aim of achieving full justice and world peace. However, as the number of signatory states to international treaties continues to grow gradually, it can be seen that, to the same extent, other cultural realities are being incorporated into global agendas, and the number of resolutions, declarations and general international recommendations is keeping pace with this new dynamic⁽¹⁰⁾.

This new paradigm faces resistance, as most international resolutions are not legally binding⁽¹¹⁾. Although they have political, moral or normative value, influencing international practice and the formation of customary law, they express the consensus opinion of the international community on certain issues, establishing guiding principles or guidelines and creating a favorable environment for cooperation between states.

In summary, General Recommendation N.º 24 emerges as an important instrument for promoting gender equality in the area of health, ensuring that women have access to the care they need without facing discrimination or obstacles. However, despite this, it does not impose direct legal obligations on States Parties in the same way as international treaties. In this context, although recommendations are not recognized as a primary source, Marcelo Lamy's perspective^(12, p.57) invites us to a new interpretation and adaptation of the theory of sources: "there are customs that can originally be shaped into resolutions, declarations and recommendations. The absence of a dense practice can be made up for by the significant generality of legal opinion, aligned with the conviction that a certain practice should be considered necessary."

Final considerations

CEDAW, as a fundamental legal instrument, demonstrates a collective commitment by States Parties to combat gender discrimination and promote equal opportunities for women and girls. By addressing issues ranging from civil and political rights to social and economic rights, the convention recognizes the complexity and interconnectedness of the challenges faced by women around the world.

The results of the survey highlight the relevance of general recommendation no. 24, drawn up by the CEDAW Committee, by broadening the guidelines, covering the importance of issues related to sexual and reproductive health, the prevention of gender-based violence and women's participation in decision-making about their health.

It is important to recognize that while CEDAW provides a comprehensive framework, its effectiveness depends on effective implementation by States Parties. The CEDAW Committee plays a crucial role in monitoring and promoting the implementation of the convention, although its ability to enforce its recommendations is limited by its lack of coercive power.

Finally, the continued need for engagement on women's rights at both national and international levels is highlighted. Adapting public policies to the emerging needs of women and strengthening monitoring and accountability mechanisms are essential to ensure that CEDAW fulfills its objective of achieving gender equality and eliminating discrimination against women worldwide.

Although broadening interpretation is not the purpose of the CEDAW Committee's general guidance, interpreting the convention from a political perspective means, according to Kelsen, interpreting it in accordance with its political purpose. Objectively, interpreting the recommendation from a political point of view means looking at the reported needs and the political context in which

the guideline is inserted, in accordance with the intention of the States Parties when they ratified the Convention.

Conflict of interest

The authors declare that there is no conflict of interest.

Authors' contribution

All the authors contributed equally.

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